

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

Ronald G. Holt,

Petitioner,

vs.

Carver County,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis at 9:30 a.m. on August 4 and September 1, 1999 at the Office of Administrative Hearings in Minneapolis, Minnesota.

William J. Mavity, Mavity & Associates, 1650 West 82nd Street, Suite 1460, Minneapolis, Minnesota 55431, appeared on behalf of the Petitioner, Ronald G. Holt (hereinafter "the Veteran"). De Paul Willette, Assistant County Attorney, Government Center, 600 East Fourth Street, Chaska, Minnesota 55318-2188, appeared on behalf of the Respondent, Carver County (hereinafter "County" or "the Employer"). The record closed on October 22, 1999.

NOTICE

This Report is a recommendation and not a final decision. After a review of the record, the Commissioner of the Minnesota Department of Veterans Affairs will make the final decision, in which he may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61 (1998), the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Bernie Melter, Commissioner, Minnesota Department of Veterans Affairs, Veterans Service Building, St. Paul, Minnesota 55155-2079, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

1. Whether Ronald Holt was a department head and, therefore, exempt from the provisions of the Veterans Preference Act at the time his position title was changed from Captain to Lieutenant and his job duties were changed from heading Patrol Operations to Assistant Jail Administrator, with primary responsibility for the administration of the Carver County jail;

2. If Holt was not a department head at the time of those changes, whether the changes constitute a demotion; and

3. Whether the changes to Holt's position constitute a good faith elimination of his position for legitimate reasons or whether it resulted from a bad faith motive directed at him personally and designed to oust him from his position.

Based upon all of the files, records, and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Ronald Holt is employed by the Carver County Sheriff's Office and currently holds the rank of Lieutenant. He served in the United States Air Force on active duty from June 14, 1961, until he received an honorable discharge on June 11, 1965.¹

2. Holt has been employed by the Carver County Sheriff's Office since 1982. From September, 1990 through January, 1999, he held the rank of Captain and was responsible for the Patrol Division. In 1996, due to controversies that had arisen, a study was performed concerning the organization of the Sheriff's Office. Recommendations were made for changes in the Sheriff's Office, including a suggestion to clarify the chain of command to eliminate conflicting agendas being pursued simultaneously.² The study also recommended that jobs be shifted to group similar functions together.

3. In 1998, the incumbent Carver County Sheriff decided against running for re-election. The candidates for the office were (then) Captain Holt, Ed Hjermstad (the Captain functioning as the Carver County Jail Administrator), Bob Bergmann (the Chief Deputy Sheriff for Carver County), and Bud Olson (a sergeant in the Minnetonka Police Department). A primary election was held and the two candidates receiving the most votes moved on to the general election. Bud Olson and Bob Bergmann received the

¹ Veteran's Exhibit 2, item A.

² County Exhibit 9, at 4.

most votes.³ Ed Hjermstad publicly endorsed Bud Olson prior to the general election. The functioning of the Sheriff's Office and the need for changes there were dominant issues throughout the election campaign. Bud Olson campaigned for the office of County Sheriff promising to make changes in the functioning of the Sheriff's Office.

4. Bud Olson won the general election over Bob Bergmann by 15,261 (57.4%) to 11,338 (42.6%). Sheriff Olson was sworn in on January 5, 1999. On that date, Sheriff Olson issued a memo to the three captains in the Sheriff's Office, the Lieutenant in charge of Investigations, and the Assistant Jail Administrator that all ranks were to be considered temporary, pending reorganization of the Office.⁴

5. As the job duties were arranged in 1998, the Patrol Captain (Holt) supervised six sergeants, twenty patrol officers, one part-time deputy, a reserve component and the volunteer posse.⁵ The Investigations Lieutenant supervised the narcotics, district and child abuse/sex crime detectives, the crime lab detective, and the school liaison program (including the DARE officers). The Jail Administrator Captain (Hjermstad) supervised the Assistant Jail Administrator, the program director and subordinates, the jail shift supervisors and transport, detention, court security, and medical staff, and the juvenile detention supervisor and staff. The Communications Captain (Robert Van Den Broeke) supervised a small staff of dispatchers. All of these officers reported to the Chief Deputy Sheriff, who is immediately subordinate to the County Sheriff.

6. Sheriff Olson initiated an organizational review immediately after winning election to the position of County Sheriff. As part of this review he distributed a survey seeking the suggestions of staff in the Sheriff's Department regarding problems and potential solutions.⁶ Sheriff Olson prepared draft organizational charts to determine what modifications could be made to the Department and the likely impact of those modifications.

7. On February 1, 1999, Sheriff Olson announced the changes that would be made to the organizational structure of the Department. The rank of Captain was eliminated from the command structure. Immediately subordinate to the County Sheriff would be the Chief Deputy,⁷ then two Commanders (a new rank) each supervising approximately half of the structure of the Sheriff's Office. The Operations Division would be supervised by a Commander and oversee three subdivisions: Patrol, Operation Support, and Administrative Services.⁸ The Detention Division would be supervised by a Commander and consists of Detention Support Services and Jail Administration. Each person immediately subordinate to a Commander now carries the rank of

³ The primary results were: Olson - 3,796 (44%); Bergmann - 2476 (28.7%); Hjermstad - 1701 (19.7%); and Holt - 645 (7.5%).

⁴ Veteran's Exhibit 2, item C.

⁵ County Exhibit 4.

⁶ County Exhibit 10.

⁷ Upon taking office, Olson appointed a new Chief Deputy, Dennis Owens.

⁸ County Exhibit 14.

Lieutenant (unless the subordinate is not in the uniformed service).⁹ The overall effect of the reorganization was to reduce the number of subordinates reporting to the Chief Deputy from seven to two. Former Captains Hjermstad and Van Den Broeke were appointed Commanders. Holt was made Assistant Jail Administrator and assigned the rank of Lieutenant. Hjermstad and Van Den Broeke are not veterans.

8. Under the former system, captains wore two bars on their lapels as their badge of rank. Lieutenants wore a single bar. Under the new system, commanders wear an oak leaf cluster pin and Lieutenants wear a single bar.

9. Former Captains Van Den Broeke, Holt, and Hjermstad were all at the top level of grade 18 in the County pay scale. As part of the reorganization, Olson sought a higher pay grade for those persons occupying the position of Commander. The County Human Resources Department denied the request for a higher pay grade, relying on a study by an independent consulting firm that concluded the functions of the new positions carried insufficient responsibility and/or complexity to justify an upgrade of the Commander positions beyond grade 18.

10. When the Veteran was reassigned from the position of Patrol Captain, he was assigned to the position of Assistant Jail Administrator and assigned the rank of Lieutenant. In that position, Holt supervises approximately five sergeants and twenty-seven detention officers, four nonuniformed staffers, and five persons in the Juvenile Detention Center.¹⁰ As Assistant Jail Administrator, Holt is responsible for a larger budget component than he was while Patrol Captain. He reports to Commander Hjermstad, who had been the Jail Administrator under the prior organization of the Sheriff's Department. The Operations Division is overseen by Commander Van Den Broeke, who had been the Communications Captain under the former organization.

11. In his position of Assistant Jail Administrator, Holt holds the rank of Lieutenant and is paid at the top level of pay grade 18. He is on the same pay grade level, and receives the same salary he received when he last served as Patrol Captain. His salary remains the same as that received by Hjermstad and Van Den Broeke. The people in charge of operations support and patrol services (each now supervises part of Holt's former position), Lieutenants Amrhein and Spielman, are paid at grade 17.

12. At no time has there been a suggestion that incompetence or misconduct were factors in the assignment of Captain Holt to the position of Assistant Jail Administrator and designating him as a Lieutenant.

13. As noted above, Commander Hjermstad endorsed Olson for Sheriff in the general election after Hjermstad lost in the primary. Commander Van Den Broeke had been a close personal friend of Olson's since their undergraduate years together at Michigan State University.

⁹ *Id.*

¹⁰ County Exhibit 14.

14. The Veteran filed a timely Petition with the Department of Veterans Affairs alleging that he had been demoted without cause. This proceeding was initiated by a Notice of and Order for Hearing dated March 17, 1999, issued by the Commissioner of Veterans Affairs pursuant to his authority under Minn. Stat. § 197.481 (1998).

15. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Under Minn. Stat. §§ 14.50 and 197.481 (1998), the Administrative Law Judge and the Commissioner of Veterans Affairs have authority to consider the issues raised in this proceeding under the Veterans Preference Act, Minn. Stat. §§ 197.46, *et seq.* (1998).

2. The Notice of Petition and Order for Hearing was proper in all respects, and the Department of Veterans Affairs has complied with all relevant substantive and procedural requirements of statute and rule.

3. Ronald Holt is an honorably discharged veteran within the meaning of Minn. Stat. §§ 197.447 and 197.46 (1998) and is entitled to all of the protections and benefits afforded by the Veterans Preference Act, Minn. Stat. §§ 197.46, *et seq.* (1998).

4. Carver County is a political subdivision of the state within the meaning of Minn. Stat. § 197.46 (1998), and its personnel practices are therefore subject to the provisions of the Minnesota Veterans Preference Act, Minn. Stat. §§ 197.46, *et seq.* (1998). The Sheriff's Department of Carver County is subject to those provisions as well.

5. The Minnesota Veterans Preference Act, at Minn. Stat. § 197.46 (1998) exempts chief deputies of elected officials and department heads from the requirement that a veteran be given notice of a right to a hearing to establish incompetency or misconduct prior to termination of his or her employment. ***State ex rel. McGinnis v. Police Service Commission of Golden Valley***, 91 N.W.2d 154, 161 at n. 10 (Minn. 1958); ***State ex rel. McOske v. City Council***, 208 N.W. 1005 (Minn. 1926). The Veteran, in his former capacity of Captain with the Carver County Sheriff's Department was not a chief deputy of an elected official or a department head for purposes of Minn. Stat. §§ 197.46 *et seq.* (1998), so the County is not exempt from provisions of the Veterans Preference Act on that basis.

6. The requirement of the Veterans Preference Act that a veteran is entitled to a hearing on whether cause existed for his or her dismissal or demotion, does not apply when a public body eliminates a position in good faith for some legitimate

purpose, such as when it is part of a good faith reorganization. ***State ex rel. Boyd v. Matson***, 155 Minn. 137, 193 N.W. 30 (Minn. 1923), ***Young v. City of Duluth***, 386 N.W.2d 732, 737 (Minn. 1986).

7. Whether a veteran's position has been eliminated in good faith for a legitimate purpose is an affirmative defense for which a public employer of the veteran has the burden of proof. ***State ex rel. Caffrey v. Metropolitan Airport Commission***, 246 N.W.2d 637 (Minn. 1976); cf. ***Southern Minnesota Municipal Power Agency v. Schrader***, 394 N.W.2d 796, 802 (Minn. 1986).

8. The reorganization of the Carver County Sheriff's Department, effective March 1, 1999, that eliminated the rank of Captain and reassigned Ronald Holt to the rank of Lieutenant, did not result in a demotion within the meaning of the Minnesota Veterans Preference Act. The reassignment was made in good faith for legitimate purposes.

9. Carver County has not denied the Veteran rights provided to him by Minn. Stat. § 197.46 (1998).

10. Any of the foregoing Findings more properly termed a Conclusion is hereby adopted as such.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Petition of Ronald G. Holt be DISMISSED.

Dated this _____ day of October 1999.

RICHARD C. LUIS
Administrative Law Judge

Reported: Tape Recorded (eight tapes); No Transcript Prepared.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1 (1996), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

Ronald Holt maintains that the reorganization of the Carver County Sheriff's Office and the failure to either retain him as a Captain or to appoint him to the position of Commander constitute a demotion in violation of the Veterans Preference Act. Carver County asserts that all the position changes that occurred at that time are the result of a good faith reorganization. When position changes are made pursuant to such a reorganization, the prohibition against removal for any reason other than misconduct or incompetence does not apply.¹¹ Due to Holt's prior position as Patrol Captain, there is the further issue of whether he was a "department head" or the chief deputy of one, and therefore excluded from the protections of the Veterans Preference Act. There is also a question as to whether the job reassignment constitutes a demotion.

The Veterans Preference Act, Minn. Stat. § 197.46 (1998), provides in pertinent part:

No person holding a position by appointment or employment in the several counties, cities, towns, school districts and all other political subdivisions in the state, who is a veteran separated from the military service under honorable conditions, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing.

Any veteran who has been notified of the intent to discharge the veteran from an appointed position or employment pursuant to this section shall be notified in writing of such intent to discharge and of the veteran's right to request a hearing within 60 days of receipt of the notice of intent to discharge.

Ronald Holt is an honorably discharged veteran, entitled to all applicable protections of the Veterans Preference Act. There is no dispute that Holt was not given notice of any hearing on removal from his position as Captain with the Carver County Sheriff's Office. To prevail in this matter, Carver County must demonstrate that its action does not trigger the hearing right provided by Minn. Stat. § 197.46.

One exemption in the hearing requirements of the Veterans Preference Act is for removals of chief deputies or department heads.¹² Carver County has stipulated that the exemption does not apply to Holt.

A long-standing exemption from the hearing requirement is when a veteran is removed from a position pursuant to a good faith reorganization. An assertion of this exemption can be rebutted by showing that the "reorganization" is a subterfuge, and the

¹¹ *Young v. City of Duluth*, 386 N.W.2d 732, 740 (Minn. 1986).

¹² Minn. Stat. § 197.46 (1998).

employer was motivated in fact by a desire to oust the veteran from the position. The scope of the exemption was well stated by the Minnesota Supreme Court in the first case to establish it:

The purpose of this section [the Veterans Preference Act] is to take away from the appointing officials the arbitrary power, ordinarily possessed, to remove such appointees at pleasure; and to restrict their power of removal to the making of removals for cause. But it is well settled that statutes forbidding municipal officials from removing appointees except for cause are not intended to take away the power given such officials over the administrative and business affairs of the municipality, and do not prevent them from terminating the employment of an appointee by abolishing the office or position which he held, if the action abolishing it be taken in good faith for some legitimate purpose, and is not a mere subterfuge to oust him from his position. [Citations omitted.] The municipal authorities may abolish the position held by an honorably discharged soldier and thereby terminate his employment, notwithstanding the so-called veteran's preference act.¹³

As with any affirmative defense, the employer bears the burden of proof that the veteran's position was eliminated as the result of a good faith reorganization.¹⁴ In this matter, the first recommendations regarding reorganization were made eighteen months prior to the elimination of Holt's position as Captain. Significant public controversy existed over the operations of the Sheriff's Department. Those operations were widely discussed in the electoral campaign prior to the reorganization. The successful candidate for the office of County Sheriff promised to make changes in the Sheriff's Department if elected.

The independent recommendations regarding reorganization did not specifically suggest eliminating the rank of Captain. But the report did note that conflicting agendas were pursued due to the lack of a firm chain of command. The actions taken by Sheriff Olson, reducing the number of persons reporting to the Chief Deputy from seven persons of various ranks to two Commanders and grouping similar functions under each Commander, accomplish the goals set out by the independent recommendation.

Ronald Holt related several conversations with Sheriff Olson to demonstrate that the elimination of the Captain rank (and the failure to appoint him as a Commander) was an effort to oust him personally from his position. The position of Commander has greater supervisory responsibility under the new structure than the position of Captain did under the old structure. The conversations cited by the Veteran indicate reasons why Sheriff Olson did not advance him to the rank of Commander. They do not support a conclusion that the reorganization was being conducted in bad faith. The result of the

¹³ *State ex rel. Boyd v. Matson*, 155 Minn. 137, 193 N.W. 30, 32 (Minn. 1923); See also *Young v. City of Duluth*, 386 N.W.2d 732, 737 (Minn. 1986).

¹⁴ See *State ex rel. Caffrey v. Metropolitan Airport Commission*, 246 N.W.2d 637 (Minn. 1976); cf. *Southern Minnesota Municipal Power Agency v. Schrader*, 394 N.W.2d 796, 802 (Minn. 1986).

reorganization was to divide the Sheriff's Department into two functional groupings. Personnel changes took place throughout the Department. Carver County has demonstrated that the reorganization was taken in good faith for legitimate purposes.

Holt implies that Olson promoted Hjermstad and Van Den Broeke over him for personal reasons. The record shows that Hjermstad endorsed Olson for Sheriff over Bergmann after the primary and that Van Den Broeke and Olson have been personal friends for years. Even if those facts weighed in Olson's decision to choose Hjermstad and Van Den Broeke for promotion, they do not, in themselves, create or constitute a cause of action under the Veterans Preference Act in the context of this case. The issue is not whether the Veteran was denied a promotion, for reasons unrelated to his qualifications for the position. The issue is demotion - and a demotion does not occur for purposes of the Act when a veteran's position is eliminated pursuant to a good-faith reorganization and the veteran is assigned subsequently to an equivalent position.¹⁵

Measured by the responsibilities of each position, the change in the Veteran's status does not constitute a demotion. The rank of Lieutenant appears to be lower than the rank of Captain, but with the complete elimination of the rank of Captain from the chain of command, there is no functional demotion of Holt resulting from the change. Holt's salary and pay range remained unchanged. The number of persons supervised by him and the complexity of the job have not been shown to be substantially different, as between his former and present assignments.¹⁶ A veteran cannot base a claim for a demotion hearing under the Veterans Preference Act because of a change in job title alone.¹⁷

Holt argues that the accommodation made by Olson for Lieutenant Rod Peddycoart took away responsibilities anticipated originally for Holt under the reorganization, which amounted to demoting him further. This argument is misplaced. The accommodation made for Peddycoart was to allow him to retain lieutenant bars rather than be uniformed as a sergeant. A comparison of Exhibits 2-E and 2-I show Peddycoart to be performing the same functions, whether as a (proposed) sergeant or as a lieutenant.

Sheriff Olson's reassignment of Holt to run the Carver County Jail is a legitimate exercise of supervisory power. Since the job duties are equivalent and the salary is identical, the reassignment is not a demotion. The change in rank does not amount to a demotion, since the former rank of Captain has been eliminated and the new rank of Commander is actually a promotion (albeit a slight one) from Captain. No valid claim arises under the Act when a veteran fails to receive a promotion, unless the facts and circumstances of the situation looked at as a whole amount to a demotion. In this case, the only "demotion" apparent is shown on Holt's uniform, which now displays one less bar. This appearance of a demotion is outweighed by evidence that Holt is performing

¹⁵ **Gorecki v. Ramsey County**, 437 N.W.2d 646, 650 (Minn. 1989)

¹⁶ See Findings 5 and 10.

¹⁷ *Id.*

similar work for the same salary with the same pay range. The record does not demonstrate that Holt's rights as a veteran were violated.

R.C.L.